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Our Ref.: 4380-105
Your Ref.: 10/014,797 Date: May 9, 2005

To: Commissioner for Patents c/o Examiner Afremova
Firm: United States Patent and Trademark Office
Facsimile No.: 703-872-9306
From: Willem F. Gadiano

Number of Pages (including cover sheet): 17

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ATTACHMENT/S:

1. Transmittal of Appeal Brief with request for 4-Month Extension of Time (2 pages);
2. Appeal Brief (6 pages); and
3. Amendment After Final Rejection (8 pages).

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Date:

By:

Willem F. Gadiano, Registration No. 37,136

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

Steven M. BESSETTE

Atty. Ref.: 4380-105; Confirmation No. 1638

Appl. No. 10/014,797

TC/A.U. 1651

Filed: December 14, 2001

Examiner: Afremova, Vera

For: PESTICIDAL COMPOSITIONS CONTAINING ROSEMARY OIL AND
WINTERGREEN OIL

* * * * *

TRANSMITTAL OF APPEAL BRIEF

Honorable Commissioner for Patents
Mail Stop Appeal Brief-Patents

Sir:

Submitted herewith is Appellant(s) Appeal Brief in support of the Notice of Appeal filed November 8, 2004 and an Amendment After Final Rejection. Please grant a four (4) month extension of time for entry of same. Please charge the Appeal Brief and Extension of Time fees (small entity) to Deposit Account 14-1140.

Steven M. BESSETTE
Appl. No. 10/014,797

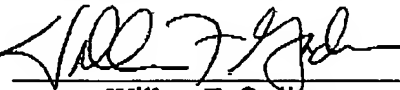
Atty. Docket No. 4380-105

To the extent necessary, please grant any further extension of time under 37 C.F.R.
1.136 deemed necessary. Please charge any shortage in fees due, or any excess fees paid,
to Deposit Account 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By.



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* * * * *

APPEAL BRIEF**Mail Stop Appeal Brief-Patents**

Honorable Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Appellant herein appeals from the Examiner's final rejection of the pending claims. Appeal is timely and proper pursuant to 37 CFR § 1.191(a). This Appeal Brief is submitted in support of the Notice of Appeal filed November 8, 2004. Appellants concurrently file an Amendment After Final Rejection solely in an effort to advance prosecution and obviate the need for this Appeal.

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REAL PARTY IN INTEREST

This application is assigned to EcoSmart Technologies, Inc., by assignment recorded on July11, 2002, at Reel 013087, Frame 0792.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1, 7, 17, 20 and 140-145 are pending. Claims 2-6, 8-16, 18, 19, and 21-139 have been canceled without prejudice or disclaimer of the subject matter they contain. A copy of the pending claims (as amended in the concurrently filed Amendment After Final Rejection) is found in APPENDIX A attached hereto.

STATUS OF AMENDMENTS

All amendments filed in this case before May 9, 2005, have been entered. An Amendment After Final Rejection is being concurrently filed with this Appeal Brief to overcome the grounds of rejection as set forth in the final Office Action from which this appeal was taken.

SUMMARY OF INVENTION

The presently claimed invention is directed to pesticidal compositions comprising a pesticidally acceptable carrier and a pesticidally active ingredient, wherein the pesticidally active ingredient consists of rosemary oil and wintergreen oil.

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ISSUES

1. Should the currently pending claims remain rejected under 35 U.S.C. §§ 102(b) and 103(a), as being unpatentable over the prior art applied in the final Office Action?

GROUPING OF CLAIMS

Under 35 U.S.C. § 282, Appellant submits that the patentability of any one appealed claim is not solely predicated on the patentability of the remaining appealed claim(s). Each claim of this patent application is separately patentable and upon issuance of a patent will be entitled to a separate presumption of validity. Pursuant to 37 C.F.R. § 1.192(5), each pending claim(s) will separately stand or fall in this appeal.

THE ARGUMENT

Appellant's responses to each of the rejections raised in the final Office Action against the currently pending claims (1) are set forth in the concurrently filed Amendment After Final Rejection and (2) are incorporated herein by reference in their entirety. Reconsideration and reversal of the pending rejections are respectfully requested.

CONCLUSION

In view of the foregoing, Appellant submits that there exists no factual basis to support a conclusion that the present claimed subject matter fails to satisfy the requirements of 35 U.S.C. §§ 102(b) or 103(a) in view of the prior art applied in the final Office Action. It is respectfully submitted that the rejection of the claims on appeal is in error and should be reversed.

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To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. The Commissioner is hereby authorized to charge any deficiency in the small-entity fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

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Date: May 9, 2005

By: 

William F. Gadiano, Reg. No. 37,136

Steven M. BESSETTE
Appl. No. 10/014,797

Atty. Docket No. 4380-105

APPENDIX A

1. A pesticidal composition comprising a pesticidally acceptable carrier and a pesticidally active ingredient, wherein the pesticidally active ingredient consists of rosemary oil and wintergreen oil.

Claims 2-6 (CANCELED)

7. The pesticidal composition of claim 1, wherein the pesticidally acceptable carrier is selected from the group consisting of mineral oil, benzyl alcohol, citronellal, d-limonene, safflower oil, soybean oil, and sesame oil.

Claims 8-16 (CANCELED)

17. The pesticidal composition of claim 1, wherein rosemary oil and wintergreen oil are present in equal amounts.

Claims 18-19 (CANCELED)

20. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is mineral oil.

Claims 21-139 (CANCELED)

140. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is benzyl alcohol.

141. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is citronellal.

142. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is d-limonene.

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143. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is safflower oil.

144. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is soybean oil.

145. The pesticidal composition of claim 7, wherein the pesticidally acceptable carrier is sesame oil.